I yield the floor.

Mr. NICKLES. I know the Senator wants to be factually correct. I believe the trigger is different from the one in the early 1990s. The fact is, if you want to help people, consider a straight extension of the program we have in current law.

I yield the floor.

THE PROSECUTORIAL REMEDIES AND TOOLS AGAINST EXPLOITATION OF CHILDREN TODAY (PROTECT) ACT

Mr. LEAHY. Mr. President, I rise today to urge the Senate to pass S. 2520, the Prosecutorial Remedies and Tools Against the Exploitation of Children Today, PROTECT, Act of 2002. This bill and the substitute I offer will protect our Nation's children from exploitation by those who produce and distribute child pornography, within the parameters of the First Amendment. I was an original cosponsor of S. 2520 and joined Senator HATCH, the ranking Republican member of the Judiciary Committee, on the Senate floor when the bill was introduced.

Since that time, I have been working with Senator HATCH both to improve the bill that we introduced together and to build consensus for it. Unlike the Administration's bill, which has been widely criticized by constitutional and criminal law scholars and practitioners, we have been largely successful in that effort. The substitute I offer today is virtually identical to the version circulated by Senator HATCH before the October 8, 2002 meeting of the Judiciary Committee. I am glad to report that this substitute has been approved by every single Democratic Senator. Moreover, every Democratic Senator has agreed to discharge S. 2520 from the Judiciary Committee for consideration and passage by the Senate, with a refining amendment.

I am now asking my colleagues on the Republican side of the aisle to lift any holds and to allow this important legislation to pass the Senate. That way, the House may take up the bill and the PROTECT Act may become law before we adjourn. I know that there are some who would rather play politics with this issue, but I hope that they reconsider. It is more important that we unite to pass a bill that will both protect our Nation's children and produce convictions rather than tying up prosecutorial resources litigating the constitutionality of the tools we give the Justice Department to use. This legislation will accomplish those goals.

Two weeks ago I convened a hearing on this issue to hear from the Justice Department, the National Center for Missing and Exploited Children, CMEC, and constitutional scholars. The constitutional scholars testified that the provisions of S. 2520 were likely to withstand the inevitable court challenges ahead. Unfortunately, they could not say the same of the Administration's proposal and H.R. 4623. Professor Frederick Schauer from Harvard, who served on the Meese Commission on pornography and authored its findings, as well as Professor Anne Coughlin from the University of Virginia both agreed that the Administration's bill and H.R. 4623 crossed over the First Amendment line after the Supreme Court's decision in Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389. Even the ACLU has passed along views from its First Amendment expert that S. 2520 is ''well crafted and should survive constitutional scrutiny.''

That point is crucially important, because it does no one any good to pass a ''quick fix'' law that will land us right back where we started in five years, with no valid law on the books to protect our Nation's children from exploitation. We owe our children more than a press conference on this issue, we owe them a law that lasts.

I am not alone in that view. Testimony at the Judiciary Committee hearing made this point clearly. Professor Schauer testified in support of the basic provisions of the PROTECT Act, but warned us about the Administration's proposal. Incidently, this same constitutional law scholar testified in favor of the Child Pornography Prevention Act, CPPA, in 1996, but he also correctly warned us then about the precise parts of that law that would be struck down. Here is what he said this time around:

> [W]hether it is open to academic or congressional criticism, Justice Kennedy's opinion for a 7–2 Court still represents the definitive and authoritative interpretation of the First Amendment in the child pornography context, and thus represents the law. Legislation inconsistent with Free Speech Coalition would not only be inconsistent with current constitutional law, therefore, but would also represent a tactical mistake in an attempt to combat the horror of child pornography. As the six year course of litigation under the previous Act so well demonstrates, constitutionally suspect legislation under existing Supreme Court interpretations of the First Amendment, whatever we may think of the wisdom and accuracy of those interpretations, puts the process of prosecuting the creators of child pornography on hold while the appellate courts proceed at their own slow pace. There is room in our legislative world for legislation that is largely symbolic, but for Congress to enact symbolic but likely unconstitutional legislation would have the principal effect of postponing for conceivably six more years the ability to prosecute those creators of child pornography whose prosecution is consistent with the Supreme Court's view of the First Amendment.

After our Judiciary Committee hearing, Senator HATCH and I continued to work to improve our bill to address concerns that had been raised. We worked to come up with a Hatch-Leahy substitute amendment for consideration by the Judiciary Committee that included technical corrections and improvements to the original text of S. 2520 that we could both agree upon. These included addressing some issues raised by the National Center for Missing and Exploited Children, CMEC, concerning the scope of the victim shield provision to limit that provision to ''non-physical'' information.

The changes in the proposed Hatch-Leahy substitute also included adopting the House bill's measures allowing the CMEC to share information from its tip line directly with State and local law enforcement officers, instead of always passing the information through the FBI. Although the Administration did not originally ask for this change, the CMEC has reported that the FBI is either unwilling or unable to share information from the child exploitation tip line in a timely manner with state and local law enforcement. As the Chairman of the Committee charged with overseeing the FBI, I was disappointed to hear this appraisal of the FBI. To remedy this situation, and in the spirit of compromise and reconciling this legislation with the House passed bill, the substitute to S. 2520 incorporates this change.

I note that Senator HATCH would not agree to accept my proposal that we also include a provision that would ensure that tips to the child exploitation tip lines come from ''non governmental sources'' so that government agents could not ''tickle'' the tip line to try to avoid the legal requirements of the Electronic Communications Privacy Act. I did not insist on this important provision because, with time running out in this Congress, we must all compromise if we want to pass a bill, and I want to pass this bill.

In any event, I placed S. 2520 on the Judiciary Committee agenda for its meeting on October 8, 2002. Unfortunately, due to procedural issues, including the two hour rule that was invoked because of the debate on Iraq, and procedural maneuvering that centered around judicial nominations, members from the other side of the aisle objected to the consideration of this and all other legislative proposals before the Judiciary Committee. The Judiciary Committee was, consequently, unable to consider the bipartisan substitute circulated by Senator HATCH, and to which I agreed.

The substitute for which I now seek unanimous consent is identical to the proposed Committee substitute that Senator HATCH circulated with two exceptions. First, the substitute removes three lines that were not in the original language of S. 2520 as introduced by Senator HATCH and that were inadvertently included in the version of the substitute circulated by Senator HATCH. Indeed, I am advised that Senator HATCH was prepared to strike these 3 lines had the Judiciary Committee considered the substitute. The Leahy amendment simply corrects this inadvertent error, which was totally understandable in the rush of business.

The second change the substitute makes in order to assure swift passage of this measure is to render the new affirmative defense created in S. 2520 available to defendants who can prove

that actual adults, and no children, were used to create the visual images involved. This change would provide no help to defendants seeking to assert a ''virtual porn'' defense, which would still be blocked both for the new category of material created by the statute and any obscene child pornography. But in the case of a defendant who can, for instance, actually produce in court the 25-year old that is shown in the allegedly obscene material and prove that it is not, in fact, child pornography, or even virtual child pornography, the defense would be available. Indeed, Justice O'Connor in her concurring opinion in the Free Speech case specifically concluded that the prior law's prohibition on such ''youthful adult'' pornography was overbroad. As the testimony at our Committee hearing made clear, we should be careful not to repeat this mistake.

Other than that, this substitute is the exactly same as the substitute circulated by Senator HATCH before the Judiciary Committee's meeting on October 8, 2002. The definitions of child pornography are the same; the new tools for prosecutors to catch and punish those who exploit children are the same; the new tools given to the Center for Missing and Exploited Children are the same. This is, for all intent and purposes, the same as the Hatch-Leahy substitute.

This is a bipartisan compromise that will protect our children and honor the Constitution. I urge members from the other side of the aisle to join us. Do not hold this bill hostage as part of some effort at political payback or a ''tit for tat'' strategy. Let this bill pass the Senate and give law enforcement the tools they need to protect our children in the internet age.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

HELP AMERICA VOTE ACT OF 2002—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the conference report accompanying H.R. 3295, which the clerk will report.

The legislative clerk read as follows:

Conference report to accompany (H.R. 3295), a bill to establish a program to provide funds to States to replace punchcard voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes.

Mr. DODD. I ask unanimous consent the conference report be considered as read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, there will now be 20 minutes of debate on the conference report.

Mr. DODD. I presume that time is equally divided between Senator MCCONNELL and myself.

The PRESIDING OFFICER. That is correct.

Mr. DODD. We spoke at some length yesterday, and my colleague from Missouri was very involved. I am prepared to reserve my time until Senator BOND and Senator MCCONNELL have time to talk about this report.

Mr. MCCONNELL. I yield 8 minutes to the distinguished Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I rise today with a sense of relief and satisfaction that we have come to the end of this marathon to do something I believe everybody in this body and in the other body believe is vitally important. We need to change the system to make it easier to vote and tougher to cheat. I begin by offering my sincere thanks and congratulations to Senator DODD, to Senator MCCONNELL on our side, for their great work, to our good friends on the House side, Chairman NEY and Congressman HOYER. We have gotten to know them much better over the last months as we have worked together. This has been truly an heroic effort.

The 2000 election opened the eyes of many Americans to the flaws and failures of our election machinery, our voting systems, and even how we determine what a vote is.

We learned of hanging chads and inactive lists. We discovered our military's votes were mishandled and lost. We learned of legal voters turned away, while dead voters cast ballots. We discovered that many people voted twice, while too many weren't even counted once.

This final compromise bill—and it is a compromise in the truest sense of the word—tries to address each of the fundamental problems we have discovered.

For starters, this bill provides $3.9 billion in funding over the next 5 years to help States and localities improve and update their voting systems. In addition to providing this financial help, we also provide specific minimum requirements for the voting systems so that we can be assured that the machinery meets minimum error rates and that voters are given the opportunity to correct any errors that they have made prior to their vote being cast.

This bill also provides funding to help ensure the disabled have access to the polling place and that the voting system is fully accessible to those with disabilities. A very special thanks to the Senator from Connecticut for this unwavering commitment to those goals.

We also create a new Election Administration Commission to be a clearinghouse for the latest technologies and improvements, as well as the agency who will be responsible for funneling the federal funds to States and localities. This reflects a great deal of effort by the distinguished Senator from Kentucky.

Then the bill attempts to address one of my key concerns, and that of course is the issue of vote fraud.

Now, I like dogs and I have respect for the dearly departed, but I do not think we should allow them to vote. Protecting the integrity of the ballot box is important to all Americans, but especially to Missouri because of our State's sad history of widespread vote fraud. This legislation recognizes that illegal votes dilute the value of legally cast votes—a kind of disenfranchisement no less serious than not being able to cast a ballot.

If your vote is canceled by the vote of a dog or a dead person, it is as if you did not have a right to vote. Much has been said about this. We have even heard from some colleagues in groups that vote fraud does not really exist. We have been told by professors and other learned folks in ivory towers that vote fraud really only exists in movies. Well, gang, come down out of your ivory towers. We can explain it to you. We know better.

In just the past month we learned of voter scams in Pennsylvania, and now we are learning of an ongoing FBI investigation in South Dakota where the media reports:

> Every vote counts—unless ballots are being cast by people who don't exist, are dead, or who don't even live in South Dakota. A major case involving those voter fraud issues has been under investigation by the FBI for the past month.

If vote fraud is happening in South Dakota, it could be happening everywhere. In fact, in a report just released, which reviewed voter file information across State lines, nearly 700,000 people were registered in more than one State and over 3,000 double-voted in the 2000 election. That is 3,000 vote fraud penalties, felonies, waiting to be prosecuted. I hope local, State, and Federal officials involved will aggressively pursue these crimes.

But, as I have said numerous times since I began this quest with Senators DODD and MCCONNELL many months ago, I believe that an election reform bill must have two goals—make it easier to vote but tougher to cheat.

Lets discuss for a moment a few of our registered voters: Barnabas Miller of California, Parker Carroll of North Carolina, Packie Lamont of Washington, D.C., Cocoa Fernandez of Florida, Holly Briscoe of Maryland, Maria Princess Salas of Texas and Ritzy Mekler of Missouri.

They are a new breed of American voter. Barnabas and Cocoa are poodles. Parker is a Labrador. Maria Princess is a Chihuahua, Holly is a Jack Russell Terrier, and Ritzy is a Springer-Spaniel.

So has our voting system really gone to the dogs? And what can we do about it? This final bill takes this issue